**ABOUT THE WEEKLY SUMMARY**

**The Weekly Summary of NLRB cases, as the name implies, is a publication that summarizes each week all published NLRB decisions in unfair labor practice and representation election cases, except for summary judgment cases. It also lists all decisions of NLRB administrative law judges and direction of elections by NLRB regional directors. Links are established from the weekly summary index to the summaries and from the summaries to the full text of the decisions.**

Weekly Summary of NLRB Cases

**Index of Back Issues Online**

October 12, 2001 W-2812

## C A S E S  S U M M A R I Z E D

**SUMMARIES CONTAIN LINKS TO FULL TEXT**



## O T H E R  C O N T E N T S

*APF Carting, Inc., New York Connecticut Waste Recycling, Inc., Gem Enterprises, Inc. and Production and Maintenance Employees Local 116* (2-CA-27220, et al., 2-CB-15927; 336 NLRB No. 4) Mount Kisco and Bedford Hills, NY and Danbury, CT Sept. 28, 2001. The Board agreed with the administrative law judge's findings that Respondents APF and Gem engaged in extensive violations of Section 8(a)(1), (2), (3), and (5). These violations included, among others, bypassing Local 813 in January 1994 and directing APF employees to seek other employment if they wanted to continue membership in Local 813; withdrawing recognition from and refusing to bargain with Local 813 since May 1994; and refusing to furnish requested information to Local 813 in June 1994 concerning the relationship between APF and Gem. [HTML] [PDF]

(Members Liebman, Truesdale, and Walsh participated.)

Charges filed by Teamsters Local 813; complaint alleged violation of Section 8(a)(1), (2), (3), and (5). Hearing at New York, for 15 days beginning November 8, 1995, and concluding on July 2, 1998. Adm. Law Judge D. Barry Morris issued his April 2, 1999.

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*Cogburn Healthcare Center, Inc.* (15-CA-13874, et al., 15-RC-7988; 335 NLRB No. 105) Mobile, AL Sept. 27, 2001. The Board adopted the administrative law judge's findings that the Respondent engaged in widespread Section 8(a)(1) violations, except that it reversed his finding that the Respondent unlawfully promised benefits to employees. The Board also affirmed the judge's findings that the Respondent violated Section 8(a)(3) and (1) by discharging employees Toni Hill, Ethel Husband, Brenda Kirk, Carl Langham, and Carla Wiggins and violated Section 8(a)(3), (4), and (1) by discharging employee Elaine Collins. [HTML] [PDF]

The Respondent violated Section 8(a)(5) and (1) when it refused to bargain with the Union on April 18, 1996 when the Union requested bargaining based on a card majority. The Board, in agreement with the judge, held that a *Gissel* (*NLRB v. Gissel Packing Co.,* 395 U.S. 575 (1969)) bargaining order is necessary to remedy the effects of the Respondent's extensive unfair labor practices. The Board said:

> In *Gissel,* the Supreme Court "identified two types of employer misconduct that may warrant the imposition of a bargaining order: 'outrageous and pervasive unfair labor practices' ('category I') and 'less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes' ('category II')." The Court found that, in fashioning a remedy for category II cases, the Board can take into account the extensiveness of an employer's unfair labor practice violations in determining whether the "possibility of erasing the effects of past practices and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight and that employee sentiments once expressed through cards would, on balance, be better protected by a bargaining order."

Here, the Board concluded that the Respondent's unlawful conduct demonstrates that the holding of a fair election in the future would be unlikely and that the "employees' wishes are better gauged by an old card majority than by a new election." It found that this case falls within Category II regarding which the Court stated that the Board "can properly take into consideration the extensiveness of an employer's unfair labor practices in terns of their past effect on election conditions and the likelihood of their recurrence in the future."

(Members Liebman, Truesdale, and Walsh participated.)

Charges filed by Food & Commercial Workers Local 1657 and Toni M. Hill, an individual; complaint alleged violation of Section 8(a)(1), (3), (4) and (5). Hearing at Mobile on various dates in March, July, Aug. and Sept. 1997. Adm. Law Judge Howard I. Grossman issued his decision June 4, 1998.

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*Freeman Decorating Company, et al. and Carpenters, Louisiana Carpenters Regional Council* (15-CA-14420-1, et al., 15-CB-4392, et al.; 336 NLRB 1) New Orleans, LA Sept. 28, 2001. In this case, the Union called a strike within the meaning of Section 8(d) of the Act but failed to provide proper notification to the Federal Mediation and Conciliation Service. The strike took the form of a refusal to refer employees through the Union's exclusive hiring hall. [HTML] [PDF]

The Respondents fired the strikers, contending that, pursuant to Section 8(d), all of the employees covered by its notice of termination forfeited their status as protected "employees" under the Act by engaging in an unlawful strike. After terminating the strikers, the Respondents withdrew recognition of the Union as collective bargaining representative of the employees.

The Board majority of Members Liebman and Walsh, however, concluded that the "loss-of-status" provision of Section 8(d) did not cover the employees involved because they were not working for the Respondents at the time of the Union's action. The majority held that Section 8(d) requires the existence of an actual employment relationship before a loss of protected status can occur as the result of engaging in an unlawful strike. Members Liebman and Walsh found that the Respondent Employers failed to establish a loss of protected status. They agreed with the judge's conclusion that the Respondent Employers' real motive for the mass "termination" was to rid themselves of Local 39 and its hiring hall, and that Local 39's failure to comply with Section 8(d)(3) merely provided a convenient vehicle for reaching that goal.

In dissent, Chairman Hurtgen stated:

> As evident from this language, 'any employee' who engages in a strike is covered by the provision, i.e., is subject to a loss of status. However, the loss of status is itself more limited. The employee loses his status only vis-à-vis the employer involved in the labor dispute. As to the rest of the world, he retains his employee status. In sum, the *coverage* of the provision is broad; the *consequence* of the provision is narrow. My colleagues have confused the two concepts. They say that the *coverage* is limited to employees of the employer. [T]he language of Section 8(d) is to the contrary.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by Stage and Theatrical Employees [IATSE] Local 39 of Greater New Orleans; complaint alleged violation of Section 8(a)(1), (2), (3), and (5) and Section 8(b)(1)(A). Hearing at New Orleans, on several days beginning on October 26 and ending on December 11, 1998. Adm. Law Judge Pargen Robertson issued his decision March 31, 1999.

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*Metro Networks, Inc.* (4-CA-26812, 27207; 336 NLRB No. 3) Philadelphia, PA Sept. 28, 2001. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Dennis Brocklehurst and Mary Colleen for engaging in union activity. [HTML] [PDF]

Contrary to the judge, the Board found that the Respondent violated Section 8(a)(4) and (1) by offering Brocklehurst severance pay in consideration for signing releases. The Board held that consistent with precedent, the plain language of the severance agreement would prohibit Brocklehurst from cooperating with the Board in important aspects of the investigation and litigation of unfair labor practice charges. The Board also asserted that the agreement would prohibit Brocklehurst from assisting other employees with regard to any matter arising under the Act and/or disclosing any information to the Board with regard to any and all investigations and proceedings.

Paragraph 4 of the severance agreement provided that, in exchange for the payment, Brocklehurst would release the Respondent from all

suits, actions, causes of action, judgments, damages, expenses, claims or demands, in law or equity, which you ever had, now have, or which may arise in the future regarding any matter arising on or before the date of execution of this Agreement, including but not limited to all claims (whether known or unknown) regarding your employment at or termination of employment from Metro . . . which could arise under . . . the National Labor Relations Act.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Television and Radio Artists Philadelphia Local; complaint alleged violation of Section 8(a)(1), (3) and (4). Hearing at Philadelphia, Jan. 12, 13, and 29, 1999. Adm. Law Judge James L. Rose issued his decision April 8, 1999.

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*Taylor Wharton Division Harsco Corporation* (15-RC-8321; 336 NLRB No. 9) Ft. Irwin, CA Sept. 28, 2001. The Board affirmed the hearing officer's recommendation that Petitioner's objections 6 and 9 be sustained. The election held on March 16, 2001 resulted in 90 votes for and 89 votes against the Petitioner, with one determinative challenged ballot. No exceptions were taken to the hearing officer's recommendation that the challenge to the ballot of William deLlacer be overruled. [HTML] [PDF]

With regard to objection 9, the Petitioner alleged that the Employer threatened all employees and eligible voters by distributing literature (newsletter) that portrayed a union organizer announcing that the Company had closed. Although the Employer argued that the newsletter was a lighthearted "tongue-in-cheek" mock newspaper and the cartoon was merely a mock comics section, the hearing officer found that the cartoon was coercive because it conveyed the message that the Employer's plant would close if the employees chose union representation. The Board, in agreement, held that an employer may predict the precise effects it believes unionization will have on its company; however, the prediction must be "carefully phrased on the basis of objective fact." *Gissel Packing Co. v. NLRB,* 395 U.S. 575, 618 (1969).

Objection 6 alleged that the employer "threatened and intimidated an employee and eligible voter by suggesting that he would suffer adverse consequences for displaying a Union bumper sticker on his car parked outside of management's office." Supervisor Nicky deLlacer, upon noticing the truck with prounion stickers told employee James Cribb that Cribb was "digging himself a hole." The Board agreed that these comments would reasonably be expected to have a chilling effect on employees' freedom of choice given the proximity of the incident to the election and the close election results. The hearing officer, applying *Cambridge Tool Mfg.,* 316 NLRB 716 (1995), determined the proper test for evaluating conduct of a party is an objective one?whether it has "tendency to interfere with the employees' freedom of choice."

The Board remanded this proceeding and directed the Regional Director to open and count the ballot of deLlacer and to prepare a revised tally of ballots. If the Petitioner has received a majority of the votes cast, a certification of representative was to issue. However, if the Petitioner did not receive the majority, then the election shall be set aside and a second election shall be conducted.

(Members Liebman, Truesdale, and Walsh participated.)

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*Liquid Transporters Inc., a wholly owned subsidiary of Trimac Transportation, Inc.* (4-RC-20215, 20216; 336 NLRB No. 34) Croydon, PA Sept. 28, 2001. The Board, denying review of the Employer's petition to revoke certification, held that the Employer could not raise the issue of the supervisory status of the petitioner's election observer for the first time in its post-election objections. "It is well-established Board law, . . . that an employer must raise the alleged supervisory status of a union's election observer at the time of the preelection conference," the Board stated, citing *Monarch Building Supply,* 276 NLRB 116 (1985), among other cases. [HTML] [PDF]

(Members Liebman, Truesdale, and Walsh participated.)

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*KSM Industries, Inc.* (30-CA-13762, et al.; 336 NLRB No. 7) Germantown, WI Sept. 28, 2001. The Board agreed with the administrative law judge that the Respondent had engaged in numerous unfair labor practices, including a violation of Section 8(a)(1) by threatening striking employees with a loss of jobs and closure of the facility because of their union activities; a violation of Section 8(a)(5) by refusing to process a grievance and to provide the Union with information it requested about the grievance; another violation of 8(a)(5) by insisting on a provision that replacement workers hired during the strike would not be displaced by returning strikers; and a violation of 8(a)(3) by failing and refusing to reinstate the strikers upon their unconditional offer to return to work. [HTML] [PDF]

The Board majority of Members Liebman and Walsh reversed the judge's additional finding that the Respondent did not violate the Act by asking strikers what they were doing for a living. During a strike that began in January 1997, the Respondent's operations manager Bill James told strikers: "[t]hese people in here have jobs" and asking "[w]hat are you doing for a livelihood?" The judge found that these remarks were not threatening because, during the strike, James passed along information to the strikers about companies that were hiring and received inquiries from other companies where strikers sought interim employment. Dissenting in part, Member Truesdale agreed with the judge on this point and said James' remark was "conversational not taunting."

(Members Liebman, Truesdale, and Walsh participated.)

Charges filed by Paperworkers Local 7779; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Milwaukee, January 12-14, 1998. Adm. Law Judge Bruce D. Rosenstein issued his decision April 30, 1998.

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*Little Rock Electrical Contractors, Inc.* (11-CA-17399; 336 NLRB No. 8) Little Rock, AR Sept. 28, 2001. In a Supplemental Decision and Order, the Board agreed with the administrative law judge that the General Counsel established a prima facie case under the framework set out in FES that the Respondent violated 8(a)(3) and (1) of the Act by refusing to hire union applicants to perform electrical work at a casino construction project in Cherokee. Member Truesdale, dissenting in part, would have remanded the proceeding a second time to the judge to provide the Respondent "a sufficient opportunity" under FES to establish a defense. The majority opinion by Members Liebman and Walsh disagreed that the record should be remanded again to allow the Respondent to litigate whether the individuals the Respondent to litigate whether the individuals the Respondent hired were more qualified than the discriminatees. It noted the Respondent's brief did not request that the record be reopened, nor did the Respondent claim that the individuals it hired (excepting 20 Native Americans) were more qualified than the discriminatees. [HTML] [PDF]

In all, the Respondent hired 73 employees, of which 20 were Native Americans. The parties stipulated that the Respondent, according to its contract with the Tribal Counsel Gaming Enterprises, would give a hiring preference to Native Americans. The Board left to compliance the determination of which discriminatees would have been hired for the 53 available openings.

(Members Liebman, Truesdale, and Walsh participated.)

Charges filed by Electrical Workers (IBEW) Local 238; complaint alleged violation of Section 8(a)(3) and (1). Hearing at Winston-Salem, NC on Jan. 26 - 28, 1998. Adm. Law Judge Lawrence W. Cullen issued his decision Oct. 16, 1998.

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*Bowling Transportation, Inc.* (25-CA-26896; 336 NLRB No. 32) Owensboro, KY Sept. 28, 2001. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by telling employees Richard Ashby and Kenneth Hanks they were being disciplined for protected concerted activity and, in Ashby's case, for suspected union activity, and subsequently discharging them. It agreed that suspected union activity was a motivating factor in both discharges. [HTML] [PDF]

(Members Liebman, Truesdale, and Walsh participated.)

Charge filed by Richard Ashby, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Owensboro on Jul. 31 and Aug. 1, 2000. Adm. Law Judge William G. Kocol issued his decision Sept. 22, 2000.

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*Williams Energy Services* (16-CA-20164; 336 NLRB No. 11) Galena Park, TX Sept. 28, 2001. The Board majority of Members Liebman and Truesdale, affirming the administrative law judge, found that the Respondent unlawfully withdrew recognition on Nov. 17, 1999, upon receiving a Nov. 3, 1999 decertification petition signed by all unit employees. The Respondent took over the business on Aug. 2, 1999, as a successor employer. On Nov. 9, the Region dismissed the Aug. 5 decertification petition, citing *St. Elizabeth Manor,* 329 NLRB 341 (1999). The majority held that the Union's majority status was immune from attack for a reasonable period of time after the successor employer began to bargain, under the successor - bar doctrine of *St. Elizabeth Manor.* It concluded that a reasonable period had not elapsed. In that decision, the Board majority held that a collective-bargaining representative is "entitled to a reasonable period of bargaining without challenge to its majority status." [HTML] [PDF]

In dissent, Chairman Hurtgen, citing his dissenting opinion in *Hill Park Health Care Center,* 334 NLRB No. 55 (2001), and the dissenting opinion in *St. Elizabeth Manor,* said the Respondent thus did not violate Section 8(a)(5) by refusing to bargain with the Union. He stated further:

> Finally, my colleagues contend that their application of the *St. Elizabeth Manor* successor - bar rule appropriately balances the competing interests of employee free choice and labor stability. I do not agree. Weighing both interests, I find that the appropriate balance must be struck in favor of employees' Section 7 right to choose whether or not to be represented. My colleagues, through *St. Elizabeth Manor,* improperly deprive them of this right. In sum, I would not foreclose employee free choice.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by PACE Local 4-227; complaint alleged violation of Section 8(a)(1) and (5). This case was submitted by stipulation dated May 26, 2000. Adm. Law Judge George Carson II issued his decision Aug. 11, 2000.

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*United Food & Commercial Workers Local 1996* (10-CC-1335; 336 NLRB No. 35) Atlanta, GA Sept. 28, 2001. In this case, the Board addressed an issue of first impression: whether Section 8(b)(4)(B) of the Act prohibits a union from engaging in picketing of one employer in order to pressure another employer to recognize and bargain with the union as the certified representative of that employer's employees. The majority of Members Liebman and Walsh concluded that Section 8(b)(4)(B) does not proscribe secondary activity by a union for the purpose of enforcing its certification by the Board as the exclusive collective-bargaining representative of the primary employer's employees. [HTML] [PDF]

Accordingly, the majority found that the Respondent Union did not violate Section 8(b)(4)(ii)(B) by threatening to picket, picketing, and leafleting the United Way of Metropolitan Atlanta, a neutral, because an object of those actions was to enforce the Union's certification by the Board as the exclusive collective-bargaining representative of a unit of the Employer VNHS's employees.

Rejecting "any contention that our holding will 'open the floodgates' to widespread use of secondary pressures by unions," the majority, stressed these limitations:

> First, the exemption from Section 8(b)(4)(B)'s general prohibition against cease doing business and recognition boycotts is available only to unions that have been certified by the Board under Section 9 of the Act as the representative of the primary employer's employees. The exemption is not available to any labor organization that does not meet this threshold requirement. Second, this exemption only applies in cases where an object of the

> secondary activity is to force or require the primary employer to recognize or bargain with its employees' certified collective-bargaining representative.

Chairman Hurtgen, in dissent, would find that the Respondent Union's picketing at the United Way's premises was unlawful:

> The Respondent admits that it is engaged in a labor dispute with VNHS and that the United Way is a neutral with respect to that dispute. The Respondent's threats and picketing plainly constitute threats, coercion, or restraint of the United Way within the meaning of Section 8(b)(4)(ii). In addition, the Respondent concedes that an object of the picketing was to induce the United Way to cease contributing funds to VNHS. It is evident from the foregoing that an object of the Respondent's action was to force or require the United Way to cease doing business with VNHS, within the meaning of Section 8(b)(4)(ii)(B).

Chairman Hurtgen stated further:

> The majority argues that as long as an object of a union's secondary activities is recognitional, and the union is certified, there is no violation even if the union also has a cease doing business objective. There is no merit to this contention. ...[I]t is clear from the text and legislative history of the Act that Section 8(b)(4) applies as long as an objective of the union's actions is proscribed. The Supreme Court has never recognized an exception to this established principle. Until today, the Board has not recognized such an exception either.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

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*J.R.L. Food Corp. d/b/a Key Food* (2-CA-31661, et al.; 336 NLRB No. 6) Bronx, NY Sept. 28, 2001. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (3) of the Act by, among others, interrogating employees about union support or activities or about their cooperation with the Board's investigation, directing employees not to join or support the Union, and directing employees to report on the union activities of their fellow employees. [HTML] [PDF]

The Board disagreed with the judge on some other issues. The judge found no violation was committed when employee Cupertino Luna (Cupertino) was transferred to another store because it was in accordance with the Respondent's customary practices. The judge also dismissed the complaint allegation that Respondent unlawfully reduced Cupertino's pay. The Board, however, found that Cupertino's transfer was unlawfully motivated because the Respondent abruptly transferred him after he was observed exchanging pleasantries with union officials leafleting outside the store. After Cupertino's transfer, Respondent reduced his work day by 3-4 hours, which led to reduction in pay. Unlike the judge, who concluded that the Respondent would have terminated employee Jorge Santana even absent his union activity because of his verbal dispute involving a challenge to General Manager Manuel Matista's authority, the Board held that the Respondent seized on Santana's conduct as a pretext to disguise an unlawful discharge.

(Members Liebman, Truesdale, and Walsh participated.)

Charge filed by Food & Commercial Workers; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York, NY on Jan. 11, 12, 14 and Feb. 8-9, 1999. Adm. Law Judge Michael A. Marcionese issued his decision April 12, 1999.

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*Integrated Health Services, Inc.* (8-CA-31566, et al.; 336 NLRB No. 13) Warren, Shelby, Seville, Alliance, Washington Court House, and Galion OH Oct. 2, 2001. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (5) of the Act by granting wage increases and modifying the rates of pay of employees without the Union's consent at seven of its facilities during the term of its collective-bargaining agreements with the Union. [HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by SEIU District 1199; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Cleveland on Jan 30 and 31, 2001. Adm. Law Judge Margaret M. Kern issued her decision April 23, 2001.

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*C.P. Associates, Inc.* (34-CA-8123); 336 NLRB No. 12) Storrs, CT Sept. 28, 2001. In agreement with the administrative law judge, the Board concluded that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire Todd Dexter and Judith Livesey because of their union membership. Contrary to the judge, who dismissed complaint allegations that the Respondent coercively interrogated Theodore Mayo, threatened him with job loss, and terminated him because of his union membership and activities, the Board held that the General Counsel met his burden of establishing that protected activity was a motivating factor in the Respondent's decision to discharge Mayo. [HTML] [PDF]

(Members Liebman, Truesdale, and Walsh participated.)

Charge filed by Bricklayers Local 1; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Hartford on April 14 and 15, 1998. Adm. Law Judge Michael A. Marcionese issued his decision July 23, 1998.

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*Desert Palace, Inc. d/b/a Caesar's Palace* (28-CA-14240; 336 NLRB No. 19) Las Vegas, NV Sept. 28, 2001. The Board reversed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by instructing employees not to discuss the Respondent's on-going drug investigation with fellow employees, by discharging employees Richard Zollo and Louis Louft because they discussed the investigation with other employees, and by interrogating employee Daniel Miranto concerning whether employees had discussed the investigation. [HTML] [PDF]

The Board agreed with the Respondent's contention that its need to maintain the confidentiality of its ongoing drug investigation is a substantial business justification that justifies the intrusion on its employees' exercise of Section 7 rights.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Richard Zollo, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Las Vegas on Jan. 15 and 16, 1998. Adm. Law Judge Frederick C. Herzog issued his decision Aug. 25, 1998.

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*Fleming Companies, Inc., Memphis General Merchandise Division* (26-CA-17899, et al.; 336 NLRB No. 15) Memphis, TN Sept. 28, 2001. Members Truesdale and Walsh, with Chairman Hurtgen dissenting in part, agreed with the administrative law judge that the Respondent, through statements made by Leadman Mitch Zweig, violated Section 8(a)(1) of the Act by informing employees that it was imposing more stringent working conditions and would start enforcing rules concerning use of assigned timeclocks because of union organizing activity. The Board majority affirmed the judge's finding that the Respondent violated the Act by threatening employees with plant closure if the employees selected the Union to represent them, by removing union literature from an employee bulletin board, and by threatening an employee with discipline for posting union literature on it and distributing the literature in the break room. [HTML] [PDF]

Chairman Hurtgen, contrary to his colleagues, would find that the Respondent did not violate Section 8(a)(1) by removing union literature from a company bulletin board. He said that the court's rationale in *Guardian Industries Corp. v. NLRB,* 49 F.3d 317 (7th Cir. 1995), is applicable to the instant case. He also said "[t]here is no Section 7 right to post literature on company bulletin boards. There is only a Section 7 right to be free from discriminatory treatment. Thus, the relevant inquiry is whether the Respondent's posting policy, treats, even-handedly, like postings. If, as here, it does, there is no warrant for a special exception for union literature."

(Chairman Hurtgen and Members Truesdale and Walsh participated.)

Charge filed by Teamsters Local 667; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Memphis on various dates between January 5, 1998 and March 20, 1998. Adm. Law Judge Richard J. Linton issued his decision Sept. 18, 1998.

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*Mingo Logan Coal Co. and Mahon Enterprises, Inc.* (9-CA-31797, 31939; 336 NLRB No. 5) Wharmcliffe, WV Sept. 28, 2001. The Board affirmed the administrative law judge's finding that the Respondents were joint employers and violated Section 8(a)(1) and (3) of the Act by laying off 18 employees on April 10, 1994; coercively interrogating employees about union support or union activities; and threatening employees with loss of job closure of the mine or not hiring for engaging in union activity. [HTML] [PDF]

(Members Liebman, Truesdale, and Walsh participated.)

Charges filed by Mine Workers; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Logan and Charleston, WV on Jan. 21-24, Feb. 24-28, and Mar. 3-6, 1997. Adm. Law Judge Marion C. Ladwig issued his decision Feb. 25, 1998.

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*Morgan Services, Inc.* (3-CA-23305, et al.; 336 NLRB No. 21) Buffalo, Jamestown, Olean, and Rochester, NY Sept. 28, 2001. The Board agreed with the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act in January 2000 when it dealt directly with its rug department employees concerning a proposed change in the department's work schedule and unilaterally changed the work schedule without affording the Union adequate notice and an opportunity to bargain. It also adopted the judge's finding that the Respondent did not unlawfully assist in circulating a decertification petition signed by a majority of unit employees and did not unlawfully refuse to bargain with the Union on and after May 2, 2000 because it had a reasonable good-faith doubt of the Union's continuing majority status. [HTML] [PDF]

The Board modified the judge's recommended order by providing that the Respondent must cease and desist from bypassing and refusing to bargain with any labor organization that is or may become its employees' representative and must take certain affirmative actions at the Union's request if the Union still represents the Respondent's bargaining-unit employees.

(Chairman Hurtgen and Members Truesdale and Walsh participated.)

Charges filed by Laundry Workers Local 168-39; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Buffalo on Aug. 3 and 4, 2000. Adm. Law Judge Wallace H. Nations issued his decision December 15, 2000.

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## LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Pepsi America, Inc.* (fka Delta Beverage Group) (Teamsters Local 1196) Collierville, TN October 1, 2001. 26-CA-19686, et al.; JD(ATL)-63-01, Judge Lawrence W. Cullen.

*Wal-Mart Stores, Inc.* (Food & Commercial Workers) Orlando, FL October 3, 2001. 12-CA-20986-1,-2; JD(ATL)-62-01, Judge William N. Cates.

*Posadas De Puerto Rico Associates, Inc. d/b/a Condado Plaza Hotel & Casino* (Asociacion de Empleados de Casino de Puerto Rico) San Juan, PR October 3, 2001. 24-CA-8544, 24-CA-8699; JD-134-01, Judge William G. Kocol.

*Pacific Coast League Of Professional Baseball Clubs, Inc. et al.* (an Individual) Colorado Springs, CO September 28, 2001. 28-CA-16916; JD(SF)-81-01, Judge Gregory Z. Meyerson.

*Phoenix Coca-Cola Bottling Company* (Seafarers, Atlantic Gulf and Island Waters District) Tempe and Prescott, AZ September 28, 2001. 28-CA-16595, 16908; JD(SF)-77-01, Judge William L. Schmidt.

*Davey Roofing, Inc.* (Roofers Local 162) Las Vegas, NV September 28, 2001. 28-CA-16394; JD(SF)-84-01, Judge Burton Litvack.

*AT Systems West, Inc. formerly known as Armoured Transport, Inc.* (Security, Police and Fire Professionals Local 100) Sacramento, CA September 28, 2001. 31-CA-24906; JD(SF)-79-01, Judge Gerald A. Wacknov.

*Stevedoring Services of America, et al.* (Longshoremen [ILWU] Local 54) Oakland, CA September 24, 2001. 32-CA-18373-1; JD(SF)-75-01, Judge Clifford H. Anderson.

*Independent Electrical Contractors of Houston, Inc., et al.* (Electrical Workers [IBEW] Local 716) Houston, TX October 5, 2001. 16-CA-18821-2, et al.; JD(ATL)-67-01, Judge Jane Vandeventer.

*CHEP USA* (an Individual) Sardis, MS October 5, 2001. 26-CA-20126; JD(ATL)-66-01, Judge Margaret G. Brakebusch.

*Bouille Clark Plumbing, Heating and Electric, Inc.* (Electrical Workers [IBEW] Local 139) Elmira, NY October 4, 2001. 3-CA-22761; JD-131-01, Judge Paul Buxbaum.

*Lee Summit Hospital and Health Midwest* (Nurses United for Improved Patient Care) Independence and Kansas City, MO September 28, 2001. 17-CA-21072, 21220; JD(SF)-83-01, Judge Gerald A. Wacknov.

*JANO Graphics, Inc.* (Communication Workers Local 14904) Ventura, CA September 28, 2001. 31-CA-24241, et al.; JD(SF)-76-01, Judge Jay R. Pollack.

*Diamond Walnut Growers, Inc.* (Teamsters Local 601) Stockton, CA September 28, 2001. September 24, 2001. 32-CA-17353, et al.; JD(SF)-74-01, Judge James M. Kennedy.

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**TEST OF CERTIFICATION**

*(In the following case, the Board granted the General Counsel's motion for summary judgment based on the ground that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding. The case did not present any other issues.)*

*AOTOP, LLC d/b/a Excel Rehabilitation and Health Center* (Service Employees Local 1199) (12-CA-21576; 336 NLRB No. 10) Tampa, FL September 28, 2001.

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**NATIONAL LABOR RELATIONS BOARD**
**DIVISION OF INFORMATION**
**WASHINGTON, D.C. 20570**

October 12, 2001

**NOTICE OF PUBLICATION**

**NLRB JUDGES BENCH BOOK NOW IN STOCK FOR SALE AT GPO**

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